

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT
WESTERN DIVISION**

In Re:	*	Case No.1:18-bk-14408
	*	Judge Jeffrey P. Hopkins
Flipdaddy's, LLC	*	Chapter 11 Proceeding
	*	
	*	
Debtor	*	

**MOTION OF THE CREDITORS, BRYANT HARTKE CONSTRUCTION AND
HARTKE & ASSOCIATES, LLC DBA SERVPRO, TO GRANT
LIMITED RELIEF OF STAY**

Now come, Bryant Hartke Construction (“Bryant”) and Hartke & Associates, LLC dba ServPro (“ServPro”), in the above-captioned chapter 11 case (the “Creditors”), by and through counsel, and hereby move the Court pursuant to 11 U.S.C. § 362(d) for an order granting limited relief from stay as to their certain claims.

In support of this “Motion,” Creditors respectfully represent as follows:

(1) On December 6, 2018 (the “Petition Date”), the Debtor commenced with this Court a voluntary case under chapter 11 of title 11, United States Code (the “Bankruptcy Code”). The Debtor is authorized to continue to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

(2) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

(3) Prior to the commencement of this case, the Debtor experienced a storm damage claim to its facilities located at 12071 Mason-Montgomery Road, Cincinnati, Ohio 45249. The Debtor engaged Bryant and ServPro for the repair of such facilities. At the time of the

commencement of this case, Bryant was owed \$13,956.22 and ServPro was owed \$874.21 for repair services. (“the Claims”)

(4) At the time of the commencement of this case, the Claims were covered under a policy of insurance issued by Central Mutual Insurance Company (“the Insurer”).

(5) The policy of insurance issued by the Insurer also includes a deductible that the Debtor would contractually be obligated to pay as part of the Claims.

(6) The Claims were duly scheduled as obligations of the Debtor as of the commencement of this case.

Basis for Relief

(7) These Creditors seek an order granting limited relief of the stay to Bryant and Hartke and ServPro to be paid on account of their prepetition claim by the Insurer; also to be paid such additional sums as approved for the additional repairs and upon completion to permit the Debtor to pay the applicable amount associated with the deductible to Bryant and ServPro.

(8) These Creditors recognize that the stay imposed in this case does not affect direct claims of Bryant and ServPro to proceed against third parties. (i.e. the Insurer). See *In re Coho Resources, Inc.*, 345 F.3d 338 (5th Cir. 2003). However, absent granting the relief sought herein, the Debtor and the Estate would be prejudiced by a delay in the completion of the repairs and the creditors of the Estate would be prejudiced by claims potentially being asserted against the Estate by Bryant Hartke Construction and Hartke and Associates, LLC, dba Serv-Pro and the Insurer. See *R.J. Groover Construction*, 411 B.R. at 465; *In re Loudon*, 284 B.R. 106, 08 (8 Cir. B.A.P. 2002); *In re G.S. Distribution, Inc.*, 331 B.R. 552, 567-68 (Bankr. S.D.N.Y. 2005) *In re 15375 Memorial Corp.*, 382 B.R. at 690.

Proposed Relief

9. Attached hereto as Exhibit A is a proposed order to grant the relief requested herein. ("The Proposed Order")

WHEREFORE, the Creditors respectfully request that the Court grant their Motion and enter an Order on Relief and Modification of the Stay Imposed Under 11 USC §362 consistent with the Proposed Order forth herein, and for such further relief as the Court deems to be just and proper.

Respectfully submitted,

/s/Barry F. Fagel

Barry F. Fagel (0060122)

Lindhorst & Dreidame

312 Walnut Street, Ste. 3100

Cincinnati, OH 45202

(513) 421-6630

bfagel@lindhorstlaw.com

ATTORNEY FOR CREDITORS,
BRYANT HARTKE CONSTRUCTION
AND HARTKE & ASSOCIATES, LLC dba
SERVPRO

**NOTICE OF FILING OF MOTION TO
GRANT LIMITED RELIEF FROM STAY AND OPPORTUNITY TO OBJECT**

Bryant Hartke Construction and Hartke & Associates, LLC d/b/a ServPro, Creditors in this case, has filed a Motion with the Court to Grant Relief from the Stay in this case. **Your rights may be affected.** **You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case.** If you do not have any attorney, you may wish to consult one. If you do not want the Court to enter an order granting the relief or if you want the Court to consider your views on the Motion, then on or before twenty-one (21) days from the date listed on the Certificate of Service below, you or your attorney must file with the Court a written response outlining your position and/or a written request for a hearing. If you mail your response/request to the Court, you must mail it early enough so the Court will receive it on or before the date stated above. You must also mail a copy to:

Flipdaddy's, LLC
7406 Jager Ct.
Cincinnati, OH 45230

Steven L. Diller
Diller & Rice, LLC
124 East Main Street
Van Wert, OH 45891

Office of the United States Trustee
36 East Seventh St.
Suite 2030
Cincinnati, OH 45202

If the court sets a hearing on your response/request, you must also attend the hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Relief from Stay combined with Notice and Opportunity to Object has been served on all creditors and other parties in interest in this case, the United States Trustee and all other parties having requested notice herein by ordinary U.S. Mail, postage prepaid as is set forth on the attached mailing matrix as of this date as well as electronic filing in compliance with the ECF rules in place in this District, on this 15th day of March, 2019.

/s/Barry F. Fagel
Barry F. Fagel (0060122)